
SUBSTITUTE HOUSE BILL 1724

State of Washington

59th Legislature

2005 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Hudgins, Wood, Appleton, Ormsby, Simpson, Morrell, Williams, Kenney, Kirby, Kagi, Cody, Schual-Berke, McCoy, Chase, Sells, Clibborn, O'Brien, Hunt, Hasegawa, Moeller and P. Sullivan)

READ FIRST TIME 03/04/05.

1 AN ACT Relating to requiring disclosure of work under state
2 contracts that is performed at locations outside the United States;
3 amending RCW 39.29.008, 41.06.142, and 43.19.1911; adding new sections
4 to chapter 39.29 RCW; creating new sections; providing an effective
5 date; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. It is essential that
8 the legislature and state agencies spend tax dollars in a manner that
9 is both responsible and consistent with the economic interests of the
10 state and the nation. The legislature and state agencies should,
11 therefore, consider indirect benefits that may be achieved when
12 entering into contracts for public works, personal services, purchased
13 services, information services, and highway design and construction.
14 Such benefits include, but are not limited to, job creation, capital
15 investment, and economic stimulus.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 39.29 RCW
17 to read as follows:

1 DISCLOSURE REQUIREMENT. For purposes of RCW 39.29.008, 41.06.142,
2 and 43.19.1911, "offshore outsourcing information" means records of:

3 (1) The locations, by country, in which work under a personal
4 service, purchased service, or civil service contract, or any
5 subcontract under such a contract, is performed outside the United
6 States;

7 (2) The nature of the work performed under a personal service,
8 purchased service, or civil service contract, or any subcontract under
9 such a contract, outside the United States; and

10 (3) The percentage of work performed under a personal service,
11 purchased service, or civil service contract, or any subcontract under
12 such a contract, outside the United States.

13 **Sec. 3.** RCW 39.29.008 and 1993 c 433 s 6 are each amended to read
14 as follows:

15 Personal services may be procured only to resolve a particular
16 agency problem or issue or to expedite a specific project that is
17 temporary in nature. An agency may procure personal services only if
18 it documents that: (1) The service is critical to agency
19 responsibilities or operations, or is mandated or authorized by the
20 legislature; (2) sufficient staffing or expertise is not available
21 within the agency to perform the service; and (3) other qualified
22 public resources are not available to perform the service. Personal
23 services contracts, and any subcontracts awarded under personal
24 services contracts, must include provisions requiring disclosure of
25 offshore outsourcing information as specified in section 2 of this act.

26 **Sec. 4.** RCW 41.06.142 and 2002 c 354 s 208 are each amended to
27 read as follows:

28 (1) Any department, agency, or institution of higher education may
29 purchase services, including services that have been customarily and
30 historically provided by employees in the classified service under this
31 chapter, by contracting with individuals, nonprofit organizations,
32 businesses, employee business units, or other entities if the following
33 criteria are met:

34 (a) The invitation for bid or request for proposal contains
35 measurable standards for the performance of the contract;

1 (b) Employees in the classified service whose positions or work
2 would be displaced by the contract are provided an opportunity to offer
3 alternatives to purchasing services by contract and, if these
4 alternatives are not accepted, compete for the contract under
5 competitive contracting procedures in subsection (4) of this section;

6 (c) The contract with an entity other than an employee business
7 unit includes a provision requiring the entity to consider employment
8 of state employees who may be displaced by the contract;

9 (d) The contract, and any subcontract awarded under the contract,
10 must include provisions requiring disclosure of offshore outsourcing
11 information as specified in section 2 of this act;

12 (e) The department, agency, or institution of higher education has
13 established a contract monitoring process to measure contract
14 performance, costs, service delivery quality, and other contract
15 standards, and to cancel contracts that do not meet those standards;
16 and

17 ((+e)) (f) The department, agency, or institution of higher
18 education has determined that the contract results in savings or
19 efficiency improvements. The contracting agency must consider the
20 consequences and potential mitigation of improper or failed performance
21 by the contractor.

22 (2) Any provision contrary to or in conflict with this section in
23 any collective bargaining agreement in effect on July 1, 2005, is not
24 effective beyond the expiration date of the agreement.

25 (3) Contracting for services that is expressly mandated by the
26 legislature or was authorized by law prior to July 1, 2005, including
27 contracts and agreements between public entities, shall not be subject
28 to the processes set forth in subsections (1) and (4) through (6) of
29 this section.

30 (4) Competitive contracting shall be implemented as follows:

31 (a) At least ninety days prior to the date the contracting agency
32 requests bids from private entities for a contract for services
33 provided by classified employees, the contracting agency shall notify
34 the classified employees whose positions or work would be displaced by
35 the contract. The employees shall have sixty days from the date of
36 notification to offer alternatives to purchasing services by contract,
37 and the agency shall consider the alternatives before requesting bids.

1 (b) If the employees decide to compete for the contract, they shall
2 notify the contracting agency of their decision. Employees must form
3 one or more employee business units for the purpose of submitting a bid
4 or bids to perform the services.

5 (c) The director of personnel, with the advice and assistance of
6 the department of general administration, shall develop and make
7 available to employee business units training in the bidding process
8 and general bid preparation.

9 (d) The director of general administration, with the advice and
10 assistance of the department of personnel, shall, by rule, establish
11 procedures to ensure that bids are submitted and evaluated in a fair
12 and objective manner and that there exists a competitive market for the
13 service. Such rules shall include, but not be limited to: (i)
14 Prohibitions against participation in the bid evaluation process by
15 employees who prepared the business unit's bid or who perform any of
16 the services to be contracted; (ii) provisions to ensure no bidder
17 receives an advantage over other bidders and that bid requirements are
18 applied equitably to all parties; and (iii) procedures that require the
19 contracting agency to receive complaints regarding the bidding process
20 and to consider them before awarding the contract. Appeal of an
21 agency's actions under this subsection is an adjudicative proceeding
22 and subject to the applicable provisions of chapter 34.05 RCW, the
23 administrative procedure act, with the final decision to be rendered by
24 an administrative law judge assigned under chapter 34.12 RCW.

25 (e) An employee business unit's bid must include the fully
26 allocated costs of the service, including the cost of the employees'
27 salaries and benefits, space, equipment, materials, and other costs
28 necessary to perform the function. An employee business unit's cost
29 shall not include the state's indirect overhead costs unless those
30 costs can be attributed directly to the function in question and would
31 not exist if that function were not performed in state service.

32 (f) A department, agency, or institution of higher education may
33 contract with the department of general administration to conduct the
34 bidding process.

35 (5) As used in this section:

36 (a) "Employee business unit" means a group of employees who perform
37 services to be contracted under this section and who submit a bid for
38 the performance of those services under subsection (4) of this section.

1 (b) "Indirect overhead costs" means the pro rata share of existing
2 agency administrative salaries and benefits, and rent, equipment costs,
3 utilities, and materials associated with those administrative
4 functions.

5 (c) "Competitive contracting" means the process by which classified
6 employees of a department, agency, or institution of higher education
7 compete with businesses, individuals, nonprofit organizations, or other
8 entities for contracts authorized by subsection (1) of this section.

9 (6) The joint legislative audit and review committee shall conduct
10 a performance audit of the implementation of this section, including
11 the adequacy of the appeals process in subsection (4)(d) of this
12 section, and report to the legislature by January 1, 2007, on the
13 results of the audit.

14 **Sec. 5.** RCW 43.19.1911 and 2003 c 136 s 6 are each amended to read
15 as follows:

16 (1) Preservation of the integrity of the competitive bid system
17 dictates that after competitive bids have been opened, award must be
18 made to that responsible bidder who submitted the lowest responsive bid
19 pursuant to subsections (7) and (9) of this section, unless there is a
20 compelling reason to reject all bids and cancel the solicitation.

21 (2) Every effort shall be made to anticipate changes in a
22 requirement before the date of opening and to provide reasonable notice
23 to all prospective bidders of any resulting modification or
24 cancellation. If, in the opinion of the purchasing agency, division,
25 or department head, it is not possible to provide reasonable notice,
26 the published date for receipt of bids may be postponed and all known
27 bidders notified. This will permit bidders to change their bids and
28 prevent unnecessary exposure of bid prices. In addition, every effort
29 shall be made to include realistic, achievable requirements in a
30 solicitation.

31 (3) After the opening of bids, a solicitation may not be canceled
32 and resolicited solely because of an increase in requirements for the
33 items being acquired. Award may be made on the initial solicitation
34 and an increase in requirements may be treated as a new acquisition.

35 (4) A solicitation may be canceled and all bids rejected before
36 award but after bid opening only when, consistent with subsection (1)

1 of this section, the purchasing agency, division, or department head
2 determines in writing that:

3 (a) Unavailable, inadequate, ambiguous specifications, terms,
4 conditions, or requirements were cited in the solicitation;

5 (b) Specifications, terms, conditions, or requirements have been
6 revised;

7 (c) The supplies or services being contracted for are no longer
8 required;

9 (d) The solicitation did not provide for consideration of all
10 factors of cost to the agency;

11 (e) Bids received indicate that the needs of the agency can be
12 satisfied by a less expensive article differing from that for which the
13 bids were invited;

14 (f) All otherwise acceptable bids received are at unreasonable
15 prices or only one bid is received and the agency cannot determine the
16 reasonableness of the bid price;

17 (g) No responsive bid has been received from a responsible bidder;
18 or

19 (h) The bid process was not fair or equitable.

20 (5) The agency, division, or department head may not delegate his
21 or her authority under this section.

22 (6) After the opening of bids, an agency may not reject all bids
23 and enter into direct negotiations to complete the planned acquisition.
24 However, the agency can enter into negotiations exclusively with the
25 lowest responsible bidder in order to determine if the lowest
26 responsible bid may be improved. Until December 31, 2007, for
27 purchases requiring a formal bid process the agency shall also enter
28 into negotiations with and may consider for award the lowest
29 responsible bidder that is a vendor in good standing, as defined in RCW
30 43.19.525. An agency shall not use this negotiation opportunity to
31 permit a bidder to change a nonresponsive bid into a responsive bid.

32 (7) In determining the lowest responsible bidder, the agency shall
33 consider any preferences provided by law to Washington products and
34 vendors and to RCW 43.19.704, and further, may take into consideration
35 the quality of the articles proposed to be supplied, their conformity
36 with specifications, the purposes for which required, and the times of
37 delivery.

1 (8) Each bid with the name of the bidder shall be entered of record
2 and each record, with the successful bid indicated, shall, after
3 letting of the contract, be open to public inspection.

4 (9) In determining "lowest responsible bidder", in addition to
5 price, the following elements shall be given consideration:

6 (a) The ability, capacity, and skill of the bidder to perform the
7 contract or provide the service required;

8 (b) The character, integrity, reputation, judgment, experience, and
9 efficiency of the bidder;

10 (c) Whether the bidder can perform the contract within the time
11 specified;

12 (d) The quality of performance of previous contracts or services;

13 (e) The previous and existing compliance by the bidder with laws
14 relating to the contract or services;

15 (f) Such other information as may be secured having a bearing on
16 the decision to award the contract: PROVIDED, That in considering bids
17 for purchase, manufacture, or lease, and in determining the "lowest
18 responsible bidder," whenever there is reason to believe that applying
19 the "life cycle costing" technique to bid evaluation would result in
20 lowest total cost to the state, first consideration shall be given by
21 state purchasing activities to the bid with the lowest life cycle cost
22 which complies with specifications. "Life cycle cost" means the total
23 cost of an item to the state over its estimated useful life, including
24 costs of selection, acquisition, operation, maintenance, and where
25 applicable, disposal, as far as these costs can reasonably be
26 determined, minus the salvage value at the end of its estimated useful
27 life. The "estimated useful life" of an item means the estimated time
28 from the date of acquisition to the date of replacement or disposal,
29 determined in any reasonable manner. Nothing in this section shall
30 prohibit any state agency, department, board, commission, committee, or
31 other state-level entity from allowing for preferential purchase of
32 products made from recycled materials or products that may be recycled
33 or reused.

34 (10) Contracts for services, and any subcontracts awarded under
35 contracts for services, must include provisions requiring disclosure of
36 offshore outsourcing information as specified in section 2 of this act.

1 NEW SECTION. **Sec. 6.** A new section is added to chapter 39.29 RCW
2 to read as follows:

3 (1) The requirement in RCW 39.29.008, 41.06.142, and 43.19.1911
4 that certain contracts include provisions requiring disclosure of
5 offshore outsourcing information as specified in section 2 of this act
6 does not apply to:

7 (a) Contracts for goods; or

8 (b) Contracts for services if the director of the office of
9 financial management determines that the only practicable location
10 where the services may be performed is clearly and justifiably a
11 location outside the United States. This exception to the disclosure
12 requirement may apply, by way of illustration and not as a limitation,
13 to services related to the establishment and operation of foreign
14 offices created for the purpose of promoting overseas trade and
15 commerce, research projects conducted by faculty at state institutions
16 of higher education, and study abroad programs offered by state
17 institutions of higher education.

18 (2) By September 1st of each year, the director of the office of
19 financial management shall provide the house of representatives
20 commerce and labor committee and the senate labor, commerce, research
21 and development committee, or their successor committees, with a list
22 of contracts entered into in the previous fiscal year for which he or
23 she determined that the only practicable location where the services
24 could be performed was clearly and justifiably a location outside the
25 United States.

26 NEW SECTION. **Sec. 7.** SEVERABILITY. If any provision of this act
27 or its application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 8.** FEDERAL SEVERABILITY. If any part of this
31 act is found to be in conflict with federal requirements that are a
32 prescribed condition to the allocation of federal funds to the state,
33 the conflicting part of this act is inoperative solely to the extent of
34 the conflict and with respect to the agencies directly affected, and
35 this finding does not affect the operation of the remainder of this act

1 in its application to the agencies concerned. Rules adopted under this
2 act must meet federal requirements that are a necessary condition to
3 the receipt of federal funds by the state.

4 NEW SECTION. **Sec. 9.** CAPTIONS NOT LAW. Captions used in this act
5 are not any part of the law.

6 NEW SECTION. **Sec. 10.** APPLICABILITY. This act does not apply to
7 contracts entered into before July 1, 2005.

8 NEW SECTION. **Sec. 11.** EFFECTIVE DATE. This act is necessary for
9 the immediate preservation of the public peace, health, or safety, or
10 support of the state government and its existing public institutions,
11 and takes effect immediately, except for section 3 of this act which
12 takes effect July 1, 2005.

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